

September 30, 2004

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FOR IMMEDIATE RELEASE

IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 109

STATE OF IDAHO)

Plaintiff-Respondent,)

V.

Docket No. 30603

TYLER SCOTT CALLEY,)

Defendant-Appellant.)

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
Twin Falls County. Hon. Nathan W. Higer, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant. Eric D. Fredericksen argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent. Kenneth K. Jorgensen argued.

In a unanimous opinion, the Idaho Supreme Court affirmed the district court's denial of appellant Tyler Scott Calley's I.C.R. 35 motion to correct an illegal sentence.

On December 15, 1998, Calley was sentenced to a unified term of seven years, with three years determinate, for forgery in Canyon County case No. 98-7059. This sentence was suspended and Calley was placed on four years probation. On March 11, 2002, Calley pled guilty in Twin Falls County to felony eluding. On April 29, 2002, the Twin Falls County district court imposed a unified sentence of five years, with three years determinate. It was ordered that this sentence run consecutive to the sentence in the Canyon County case.

Calley appeals the district court's denial of his I.C.R. 35 motion to correct an illegal sentence. The Idaho Supreme Court reviewed the Twin Falls County district court's decision to impose a sentence of incarceration to be served separately from a sentence of incarceration that had been pronounced, but suspended, in a Canyon County case. The Court found that under common law, the courts in Idaho have discretionary power to impose cumulative sentences. The issue was not whether a court could order that a sentence of incarceration be served consecutively to a period of probation in another case or to a sentence in another case that has not yet been pronounced. The Twin Falls County district court judge immediately remanded Calley to the custody of the sheriff to begin serving the sentence of incarceration. The district court judge in Twin Falls County simply intended to sentence Calley to a period of incarceration separately from any term of incarceration that Calley served in the Canyon County case. The district court judge was within his common law authority to do so.

The Idaho Supreme Court also reviewed Calley's sentence to determine whether it was excessively harsh. The Court found with Calley's past history, including various felonies and misdemeanors and trend of violating probation, the district court properly determined that Calley was a high risk to re-offend and the sentence reflected the need to protect society.